

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Matter of:

State of Oregon, Legislative Assembly;

and

State of Oregon, Legislative
Administration Committee;

and

Jeff Kruse, individually

Respondents.

CRD Case No: STEMSH180801-11138

CONCILIATION AGREEMENT

In accordance with the provisions of Chapter 659A, Oregon Revised Statutes and Oregon Administrative Rules 839-003-0000, et seq.; the Oregon Bureau of Labor and Industries, Civil Rights Division; and State of Oregon, Legislative Assembly, and State of Oregon, Legislative Administration Committee agree to enter into this Conciliation Agreement in full settlement of the complaint filed with the Oregon Bureau of Labor and Industries, Civil Rights Division, dated August 1, 2018, case number STEMSH180801-11138, wherein the Commissioner of the Bureau of Labor and Industries appears as the Complainant, State of Oregon, Legislative Assembly, State of Oregon, Legislative Administration Committee, appear as the Respondents and Jeff Kruse appears as an aider and abettor ("Commissioner's Complaint").

This settlement reflects the harms experienced by the aggrieved persons referenced in the Commissioner's Complaint in this settlement. It also reflects the work legislative leadership has undertaken and the additional work legislative leadership will

1 be undertaking to overhaul and improve rules, training, and processes designed to
2 provide a safe and equitable environment for those working in or visiting the Capitol.
3 The Commissioner's Complaint process was politicized in a manner that inhibited both
4 sides from participating thoroughly in the investigation. The Labor Commissioner is
5 committed to strengthening an atmosphere of impartiality, fairness, and trust to all who
6 participate in agency investigatory processes.

7 Both parties participated equally in the drafting of this agreement, and no
8 ambiguity shall be interpreted against either of the parties. It is hereby agreed:
9

10 I.

11 1. Respondents agree not to engage in any unlawful retaliation or
12 discrimination against any aggrieved persons for participating in the investigation of the
13 subject complaint.

14 2. In settlement of the Commissioner's Complaint and corresponding
15 Contempt Proceeding (Multnomah County Circuit Court Case No. 18CV47137),
16 Respondents agree to monetary compensation in the following amounts:

- 17 a. \$1,095,000 total in non-economic damages in settlement of the
18 Commissioner's Complaint to eight (8) Aggrieved Persons; and
19 b. \$26,612.64 to Senator Sara Gelser for attorneys' fees and out of
20 pocket expenses; and
21 b. \$200,000.00 to BOLI for attorneys' fees and out of pocket
22 expenses.
23

24 Payments shall be delivered within thirty (30) calendar days after the Agency receives
25 the later of a fully executed copy of this Conciliation Agreement ("Due Date") and

1 Payments shall be made payable to Oregon Bureau of Labor and Industries and shall
2 be delivered to Oregon Bureau of Labor and Industries, Fiscal Services, 1045 State
3 Office Building, 800 NE Oregon St., Portland, Oregon 97232-2180.

4 3. During the pendency of the Commissioner's Complaint, Interns A and B
5 filed a lawsuit against Respondents and other defendants (Marion County Circuit Court
6 Case No. 19CV07520) (the "Civil Case"). In consideration for the promises and
7 covenants set forth in this Conciliation Agreement, Respondents will execute an
8 agreement in the Civil Case ("Civil Settlement"), specifying the amount provided as
9 payment to Interns A and B ("Settlement Payment"). Once payment is received, the
10 amount will serve as consideration in exchange for their dismissal of the Civil Case with
11 prejudice with no costs or fees, and a full Release of Claims. BOLI is not a party to the
12 Civil Settlement; however, the Settlement Payment is incorporated into this Agreement
13 in the amount recited in paragraph I.2.a. In addition, in consideration for the promises
14 and covenants set forth herein, all other individuals receiving monetary payment as
15 described in paragraph I.2.a of this Agreement shall execute a full Release of All
16 Claims.
17

18 4. Time is of the essence with the payments described above. If
19 Respondents fail to make the payments within 10 days of the Due Date, then the
20 Agency will immediately file Formal Charges against Respondents for violations
21 involving the Commissioner's Complaint and Substantial Evidence Determination. In the
22 event that the Agency does file Formal Charges against Respondents, the entirety of
23 this Agreement is terminated and neither party shall have further rights or obligations
24
25

1 under the terms and conditions of the agreement, including but not limited to
2 Respondents obligation to pay the monetary sums described in paragraph I.2.

3 5. The parties stipulate that the BOLI civil rights division investigative file
4 contains personal identifying information of aggrieved persons and individuals who
5 assisted in the investigation for the Commissioner's Complaint; and that in order to
6 protect the personal identifying information of said individuals, the BOLI civil rights
7 division investigative file will be placed under the protections of the amended interim
8 protective order in this matter.

9 6. Respondents agree to support and pursue implementation of the Oregon
10 Law Commission recommendations as set forth in the Oregon Law Commission,
11 Oregon State Capitol Workplace Harassment Work Group, Report and
12 Recommendations¹, dated December 20, 2018, and incorporated herein by reference.²
13 Respondents acknowledge that the recommendations of the Oregon Law Commission
14 are not to be construed as prohibiting or impeding the Bureau of Labor and Industries
15 authority as set forth in ORS Chapter 659A. These recommendations include:
16

- 17 a. Capitol Culture: Continue efforts from legislative leadership to
18 improve the Capitol culture;
19 b. The Equity Office: Establish a staffed Equity Office, with oversight
20 by a new bi-partisan Joint Conduct Committee;
21

22
23 ¹ A copy of the Report and Recommendations is located at:
24 https://law.uoregon.edu/images/uploads/entries/FINAL_COMMISSION_Report_and_Recommendations_%282%29.pdf.

25 ² In the event that any dispute arises between the paraphrased language included in paragraph I.6 of this agreement and the actual language of the Report and Recommendations made by the Oregon Law Commission, the actual language of the Report and Recommendations will prevail.

1 c. Training: Implement training policies and programs as outlined in
2 the Report and Recommendations, including providing training on the
3 workplace harassment policy; requiring respectful workplace training for
4 staff, contractors, and lobbyists (including applicable attendance reporting
5 procedures); conducting regular climate surveys; and recognizing a
6 Capitol Leadership Team.

7 d. Interns, Volunteers, and Pages: Implement policies and
8 recommendations related to interns, volunteers, and pages, including:
9 requiring that the name and contact information of interns, pages, and
10 volunteers be provided to Human Resources; providing workplace
11 harassment training to every intern, page, and volunteer; conduct exit
12 interviews for every intern, page, and volunteer; and
13

14 e. Prohibited Conduct: Adopt a proposed definition of "harassment,"
15 with examples, which also includes a prohibition on retaliation for reporting
16 alleged instances of harassment.

17 f. Reporting Harassment: Create at least three avenues to report
18 harassment.

19 g. Confidential Disclosures: Create the ability to make confidential
20 disclosures, subject to limited exceptions, and authorize informal contacts
21 with complainants and respondents.

22 h. Non-confidential Reports: Mandate that supervisors report non-
23 confidential complaints of workplace harassment; and encourage
24 contractors to report non-confidential reports of workplace harassment.
25

1 i. Formal Complaints: Implement recommendations made with
2 regard to formal complaints, including an individual's authorization to file
3 the same and the exercise of jurisdiction over third parties accused of
4 harassment in the State Capitol.

5 j. Protecting Reporters, Complainants, and Respondents: Implement
6 recommendations made with regard to reporters, complainants, and
7 respondents, including the imposition of safety measures to protect
8 reporters, establishing rules applicable to neutral investigators, and
9 creating due process mechanisms to ensure that respondents are given
10 the opportunity to respond to allegations made against them.

11 k. Investigations: Implement recommendations made with regard to
12 investigations, including the adoption of definitive investigative timelines
13 and appellate procedures in the event that any party disputes factual
14 findings made with respect to a complaint.

15 l. Remedies: Implement recommendations made with regard to
16 remedial measures, including procedures for when both partisan and non
17 partisan employees are accused of conduct violations.

18
19 7. Respondents agree that within 15 days of the Due Date, Respondents will
20 engage outside counsel, subject to BOLI's review and input, for handling of
21 investigations and complaints related to discrimination and sexual harassment, until
22 such time as the Equity Office is established. The offices of Legislative Counsel and
23 Legislative Administration will have no role in handling investigations related to
24 discrimination and sexual harassment. Upon its establishment, all complaints and
25

1 corresponding investigations related to discrimination or sexual harassment will be
2 handled by the Equity Office.

3 8. Time is of the essence with requirements set forth in paragraphs I.6 and
4 II.7. If Respondents fail complete requirements set forth in paragraphs I.6 and I.7 by
5 completion of the 2019 legislative session, then the Agency may immediately file Formal
6 Charges against Respondent for violations involving the Commissioner's Complaint. In
7 the event that the Agency does file Formal Charges against Respondents for non
8 monetary relief, Respondents maintain and may assert any and all defenses presently
9 available to them.

10
11 9. Respondents shall sign the Conciliation Agreement on or before March 8,
12 2019. Otherwise, the Division will report to the court in the Contempt Proceeding that
13 the parties were unable to settle their dispute and request the Court schedule oral
14 argument for the week of April 8 in accordance with paragraph 6 of the Stipulated
15 Motion for Order to Hold Case in Abeyance.

16 10. The Conciliation Agreement may be executed in counterpart, each of
17 which shall be deemed an original, and all of which, taken together, shall constitute one
18 and the same instrument. In addition, the Conciliation Agreement may be executed and
19 transmitted via email or facsimile device, which transmission shall be as valid as an
20 original.

21 II.

22
23 By approval of this Conciliation Agreement and upon compliance with its terms,
24 Complainant and Respondents declare and represent full understanding of the terms of
25

1 this Conciliation Agreement and voluntarily accept the aforesaid terms for the purpose
2 of making a full compromise and settlement of the complaint named above.

3 III.

4 The Oregon Bureau of Labor and Industries, Civil Rights Division, declares and
5 represents that it will accept this settlement for the purpose of making a full
6 compromise, adjustment, and settlement of any and all claims of, or in any way arising
7 out of, the filing of the above-named complaint.

8 IV.

9 The parties to this Conciliation Agreement agree that this Conciliation Agreement
10 and its terms shall not be used, offered, or admissible as evidence or proof of liability or
11 fault in any future arbitration, administrative, or Court proceeding, except for use in a
12 dispute arising out of the terms or enforcement of the Conciliation Agreement.
13

14
15
16 By:



Authorized Representative for Respondents
Oregon Legislative Assembly

Date:

3/5/19

17
18
19 By:

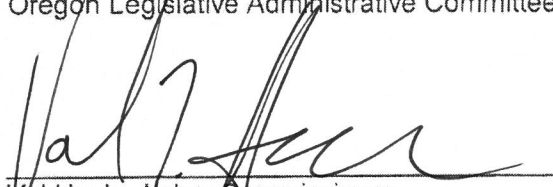


Authorized Representative for Respondents
Oregon Legislative Administrative Committee

Date:

3-5-19

20
21
22 By:





Val Hoyle, Labor Commissioner,
Complainant

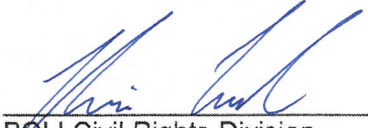
Date:

3-5-19

1
2 APPROVED AS TO FORM AND CONTENT
3

4 By:  Date: 03/05/2019
5 Attorney or Authorized Representative for
6 Respondent Oregon Legislative Assembly

7
8 By:  Date: 03/05/2019
9 Attorney or Authorized Representative for
10 Respondent Oregon Legislative Administrative Committee

11
12 By:  Date: 3/5/2019
13 BOLI Civil Rights Division
14
15
16
17
18
19
20
21
22
23
24
25